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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/601,568	06/24/2003	Carol L. Erdman	53394.000536	2376

7590

07/05/2005

HUNTON & WILLIAMS
ATTN: CHRISTOPHER C. CAMPBELL
SUITE 1200
1900 K STREET, N.W.
WASHINGTON, DC 20006

EXAMINER

SHEIKH, HUMERA N

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 07/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/601,568

Applicant(s)

ERDMAN, CAROL L.

Examiner

Humera N. Sheikh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,5-12,14-19 and 21-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,5-12,14-19 and 21-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of the Application

Receipt of the Amendment and Applicant's Response, Arguments/Remarks, all filed 04/26/05 is acknowledged.

Claims 1-3, 5-12, 14-19 and 21-25 are pending. Claims 1, 3, 10 and 14 have been amended. New claims 23-25 have been added. Claims 1-3, 5-12, 14-19 and 21-25 are rejected.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-3, 5-12, 14-19 and 21-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tramontana (WO 99/64083).

Tramontana teaches an absorbent article and method for preparing the absorbent article, containing a liquid permeable material; a liquid impermeable material; an absorbent material or a combination of absorbent materials between the permeable and impermeable layers; and adhesive wherein the adhesive contains essential oils for beneficial effects to the skin (see reference page 3, lines 1-12); (page 7, lines 6-21). The absorbent article can be of various forms, such as sanitary napkins, tampons, diapers and wipes (page 5, lines 11-16). The absorbent article contains fragrant emitting and microbe inhibiting additive (page 1). Tramontana explicitly teaches rosemary oil as the preferred essential oil in effective amounts between about 0.1 and

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about 8 wt. percent, which meets the applicant's claimed ranges (see page 3, lines 24-31); (page 5, lines 3-5) and Tables 1 & 2. The instant invention is drawn to an absorbent article comprising a top and back sheet material; an absorbent core between the top and back sheet material and an adhesive wherein at least some of the adhesive comprises a skin care benefit-effective amount of a skin wellness ingredient. There is no significant difference observed between the instant invention and the absorbent article formulation of Tramontana. Such a formulation is expressly taught, containing a liquid permeable material representing the body-contacting surface; the liquid impermeable material represents a barrier (opposite surface); an absorbent material and an adhesive. Tramontana teaches that adhesives are excellent carriers for essential oils (page 8, line 32 & page 9, line 1). The use of adhesives can improve the add-on level and placement of essential oils. The adhesive also serves as a binder material that can reduce the amount of essential oils lost prior to use (page 9, lines 2-4).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to formulate an absorbent article wherein the adhesive contains a skin-benefiting agent because adhesives are excellent carriers for essential oils; they can improve the add-on level and placement of essential oils and in addition serve as a binder material that can reduce the amount of essential oils lost prior to use. The expected result would be an absorbent article providing skin care benefits through the use of essential oils and fragrant-emitting additives contained within the adhesive.

Response to Arguments

Applicant's arguments filed 04/26/05 have been fully considered.

Applicant's arguments are comprised of the following:

- Rejection of claims 1-22 under 35 U.S.C. §102(b) over Tramontana (WO 99/64083):

Applicant argued, "Tramontana does not expressly or inherently disclose and absorbent article having an adhesive that comprises a skin wellness ingredient in the amount ranging from 0.0003 to 0.06 weight %, based on the total weight of the article."

>>Applicant's arguments were found persuasive by virtue of the Amendment filed 04/26/05. Accordingly, the 35 U.S.C. §102(b) rejection of claims 1-22 over Tramontana (WO 99/64083) has been withdrawn.

- Rejection of claims 1-22 under 35 U.S.C. §103(a) over Tramontana (WO 99/64083):

Applicant argued, "Tramontana discloses that the effective amount of essential oil used to provide a pleasant aroma and inhibit microbial growth is between 0.1 and 8.0 weight %. In contrast, the present claims recite an adhesive having a skin wellness ingredient in the range of 0.0003 to 0.06 by weight. Tramontana fails to teach the claimed range. Tramontana contains no disclosure that would motivate a person skilled in the art to *reduce* the amount of essential oil described therein to less than 0.06 weight %, based on the total weight of the article. Tramontana does not disclose or suggest possibility of skin irritation or other adverse side effects

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caused by an effective ingredient. Thus, Tramontana does not appreciate the fact that higher amounts of oils (*i.e.*, outside the claimed range) could result in skin irritation or adverse side effects.”

>> Applicant's arguments have been fully considered, but were not found persuasive. Tramontana teaches an absorbent article and method for preparing the absorbent article, containing a liquid permeable material; a liquid impermeable material; an absorbent material or a combination of absorbent materials between the permeable and impermeable layers; and adhesive wherein the adhesive contains essential oils for beneficial effects to the skin (pg. 3, lines 1-12); (pg. 7, lines 6-21). Tramontana teaches essential oil in effective amounts between about 0.1 and about 8 wt. percent (pg. 3, lines 24-31); (pg. 5, lines 3-5) and Tables 1 & 2. Admittedly, while Tramontana do not teach the instant claimed range of 0.0003 to 0.06 by weight % skin wellness ingredient, the Examiner points out that, generally, differences in concentration will not support the patentability of subject matter encompassed by the prior art unless there is evidence indicating such concentration is critical. “[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation.” *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). In the instant case, Applicants have not demonstrated any unusual and/or surprising results that are attributable to the instantly claimed amounts. Moreover, Applicant's argument that ‘Tramontana does not disclose or suggest possibility of skin irritation or other adverse side effects caused by an effective ingredient and Tramontana does not appreciate the fact that higher amounts of oils (*i.e.*, outside the claimed range) could result in skin irritation or adverse side effects’ is not persuasive since the prior art explicitly teaches the incorporation of skin wellness

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ingredients, such as oils, which are contained in amounts that are substantially close to the amounts claimed. For instance, the lower range taught by Tramontana is 0.1, which is quite near to the maximum upper limit of 0.06% claimed by Applicant. Furthermore, Applicants have not demonstrated that the additional amounts of oils contained in the absorbent article of Tramontana would be deemed detrimental to their formulation. Since Tramontana's formulation provides for effective and beneficial results in providing pleasant aroma, as well as microbial properties, it is expected that the amounts contained therein would be suitable. The prior art teaches and recognizes articles comprising the same components, for use in the same field of endeavor as the Applicant. No patentable distinction is observed in the use of Applicant's claimed amounts, since the prior art also achieves superior results using the amounts taught therein. Additionally, the Examiner points out that it is deemed obvious to one of ordinary skill in the art that suitable amounts or percentage ranges, could be determined through the use of routine or manipulative experimentation to obtain the best possible results, as these are indeed variable parameters attainable within the art. Therefore, given the general teachings of the art, the instant invention, when taken as a whole, would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made. The instant invention remains obvious and unpatentable over the cited art of record.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Humera N. Sheikh whose telephone number is (571) 272-0604. The examiner can normally be reached on Monday through Friday from 8:00A.M. to 5:30P.M., alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page, can be reached on (571) 272-0602. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have any questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

H. N. Sheikh 

Patent Examiner

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June 27, 2005


THURMAN K. PAGE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600